

SERVICE DATE – AUGUST 19, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 290 (Sub-No. 343X)

CENTRAL OF GEORGIA RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
NEWTON COUNTY, GA.

Decided: August 19, 2013

Central of Georgia Railroad Company (CGA), a wholly owned subsidiary of Norfolk Southern Railway Company, filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 14.90 miles of rail line between milepost E 65.80 (at the point of the line's crossing of Route 229 in Newborn) and milepost E 80.70 (near the intersection of Washington Street, SW, and Turner Lake Road, SW, in Covington), in Newton County, Ga. Notice of the exemption was served and published in the Federal Register on July 19, 2013 (78 Fed. Reg. 43,273). The exemption is scheduled to become effective on August 20, 2013.

The Board's Office of Environmental Analysis (OEA), in an environmental assessment (EA) served in this proceeding on July 26, 2013: (1) noted that the U.S. Environmental Protection Agency, Region 4, NEPA Program Office (USEPA) had stated that it lacked sufficient information to provide guidance on the proposed abandonment; and (2) on that basis recommended that a condition be imposed requiring CGA to consult with USEPA regarding any necessary permits.

In the EA, OEA also noted that CGA served its Historic Report on the Georgia Department of Natural Resources, Historic Preservation Division (SHPO), pursuant to 49 C.F.R. § 1105. In that report, according to OEA, CGA stated that the line contains four bridges that are 50 years old or older, and that it believes that neither the bridges nor the line meet the criteria for listing in the National Register of Historic Places (NRHP) because the bridges are of ordinary design and construction. OEA further noted that in a letter dated May 6, 2013, the SHPO submitted the following opinion: (1) no archaeological resources listed in or eligible for listing in the NRHP would be affected by the proposed abandonment; and (2) the line and its four bridges should be considered eligible for inclusion in the NRHP and that the proposed abandonment, including removal of the bridges, would result in an adverse effect to historic properties. Accordingly, OEA recommended that: (1) a condition be imposed requiring CGA to retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the NRHP until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed; and (2) CGA be directed not to file its consummation notice or initiate any salvage activities related to

abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

Comments to the EA were due August 12, 2013. In its final EA, OEA states that the SHPO, in an e-mail dated August 9, 2013, clarified its position concerning the recommended Section 106 condition, stating that the removal of track and track materials is acceptable and not part of the adverse effect finding. On August 13, 2013, OEA contacted the SHPO by e-mail concerning a proposed revision to the recommended Section 106 condition, allowing for salvage of the track and other track materials, and the SHPO replied, agreeing to the revised language. Accordingly, the recommended Section 106 condition, as revised, will be imposed as well as the previously recommended consultation condition. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Also in the EA, OEA noted that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On July 26, 2013, Newton County Trail Path Foundation, Inc. (Newton), filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with CGA for acquisition of the line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, Newton submitted a statement of its willingness to assume financial responsibility for the right-of-way, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. On July 29, 2013, CGA expressed its willingness to negotiate an interim trail use arrangement with Newton.

Because Newton's request complies with the requirements of 49 C.F.R. § 1152.29 and CGA is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, CGA may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Newton also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. Newton asks that CGA be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and be barred from the removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. Newton asserts that these structures have considerable value for recreational trail purposes and that the 180-day period is needed to develop a planned greenway as well as a utility right-of-way and to complete negotiations with CGA.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal

of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because Newton has satisfied these requirements, a 180-day public use condition will be imposed, requiring CGA to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the August 20, 2013 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on February 16, 2014, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until February 15, 2014. If a trail use agreement is reached on a portion of the right-of-way prior to February 15, 2014, CGA must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CGA is not required to deal exclusively with Newton, but may engage in negotiations with other interested persons.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on July 19, 2013, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit Newton to negotiate with CGA for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until February 15, 2014, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the August 20, 2013 effective date of the exemption, until February 16, 2014. The abandonment is also subject to the conditions that CGA shall: (1) consult with USEPA regarding any necessary permits; and (2) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the NRHP until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. CGA may, however, proceed with salvage of the track and other track materials in accordance with its consultations with the

SHPO. CGA may not file its consummation notice until the Section 106 process has been completed and the Board has removed this condition.

3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, CGA may discontinue service and salvage track and related materials. CGA shall otherwise keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels for a period of 180 days, until February 16, 2014, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by February 15, 2014, for the right-of-way, interim trail use may be implemented. If no agreement is reached, CGA may fully abandon the line.

9. This decision and notice is effective on its service date.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.